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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES OF AMERICA, No. CR-13-0566 EMC  
9 Plaintiff,  
10 v.  
11 RYAN CARROLL, *et al.*, ORDER GRANTING  
12 Defendants. DENYING IN PART  
CARROLL'S MOTION  
STATEMENTS  
(Docket No. 58)

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANT  
CARROLL'S MOTION TO SUPPRESS  
STATEMENTS**

## I. BACKGROUND

16 On October 16, 2008, at roughly nine o'clock in the morning, Ryan Carroll was awakened by  
17 Shayla Gearin. Gearin was Carroll's girlfriend at the time, and Carroll was living with her in her  
18 parents house in Lynnwood, Washington. Gearin awoke Carroll at the behest of Detectives Cheryl  
19 Franco and Wayne Hanson of the Humboldt County Police Department – who had awoken Gearin  
20 by knocking on the door to her house. Franco and Hanson asked Gearin and Carroll if they "would  
21 be willing" to join them at the Lynnwood police department for a brief conversation. Gearin told the  
22 officers she would not speak with them without her attorney present. The detectives respected  
23 Gearin's insistence on having counsel, and provided her with a phone with which to call her  
24 attorney. Gearin's attorney asked to speak with Franco, and told Franco he would bring Gearin to  
25 the department within an hour. After deliberating with Gearin about whether he should go down to  
26 the department without her, Carroll decided it would be "cool." Carroll did not have an attorney and  
27 did not insist on having one present. Franco explained to Carroll that things would go "quicker and  
28 smoother" if they could talk with him while waiting for Gearin. "[T]hat way when [Gearin] gets [to

1 the department] you'll be done probably." Carroll accepted Franco and Hanson's invitation, and  
2 their offer to give him a ride to the department.

3 Carroll arrived at the department around 9:30 am. There a plain-clothed Lynnwood police  
4 officer – Jeff Mason – joined with Franco and Hanson to escort Carroll to a room where the  
5 conversation could commence<sup>1</sup>. The room was located on the second floor of the department, in a  
6 secured area where unauthorized personnel were not permitted to roam unescorted. Once they  
7 arrived, Franco, Hanson, and Carroll crowded themselves into the seven-foot by seven-and-a-half-  
8 foot room. Mason stationed himself outside the door to guard against any unauthorized  
9 "wandering."

10 Carroll answered Hanson and Franco's questions inside the interrogation room for the next  
11 three hours. At that point Hanson said he would "give" Carroll a "break" while they spoke with  
12 Gearin. Hanson specified that Carroll could take that break in the lobby, or potentially smoke a  
13 cigarette outside, but made it clear that Carroll was needed for further questioning. After about  
14 eighty minutes, Carroll was brought back to the interrogation room for questioning. The  
15 interrogation turned accusatory quickly; within ten minutes the officers confronted Carroll with  
16 evidence that implicated his involvement in the killing of Rana. From there, Franco repeatedly  
17 accused Carroll of being at the scene of the crime, stealing Rana's belongings, and destroying  
18 evidence of the murder. When Carroll denied it, Franco told him to stop lying. The accusations and  
19 questioning continued for the next hour and a half, at which point the officers agreed to feed Carroll  
20 his first meal of the day. Carroll asked to have lunch with his girlfriend multiple times. The officers  
21 did not heed his requests. Instead, they took him to a local Jack-In-The-Box for forty minutes, then  
22 returned him to the interrogation room for further questioning. All told, Carroll's second  
23 interrogation of the day lasted four hours, during which Carroll made numerous incriminating  
24 statements.

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28 <sup>1</sup> At the evidentiary hearing, Jeff Mason testified to the location of the room, the security  
protocol of the Lynnwood police department, and his role in the interrogation.

1 Carroll now moves to suppress those statements because (1) the officers failed to inform him  
2 of his Fifth Amendment rights prior to his custodial interrogation; and (2) his statements were  
3 involuntary.

## II. DISCUSSION

## 5 | A. Miranda Violation

6 The Constitution requires that a person be advised of certain rights if they are “in custody”  
7 and “subjected to interrogation.” *Miranda v. Arizona*, 384 U.S. 436, 467-468. The government’s  
8 failure to provide such advisements renders statements made by a person during a custodial  
9 interrogation inadmissible. *See id.*

10 Here, the parties do not dispute that the detectives (1) failed to provide Carroll with a  
11 *Miranda* warning; and (2) interrogated Carroll within the meaning of *Miranda*. Thus, the question  
12 of whether Carroll's statements must be suppressed turns on whether Carroll was in "custody" at the  
13 time he made them.

In determining whether an individual was in custody, a court must inquire as to whether “a reasonable person would have felt that he or she was at liberty to terminate the interrogation and leave.” *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). If, considering the totality of the circumstances, a reasonable person would not feel free to leave the interrogation, then the interrogation was custodial. *United States v. Kim*, 292 F.3d 969, 973 (9th Cir. 2002). Generally, a reasonable person would not feel free to leave if “something [is] said or done by the authorities, either in their manner of approach or in the tone or extent of their questioning, which indicates that they would not have heeded a request to depart or to allow the suspect to do so.” *United States v. Hall*, 421 F.2d 540, 545 (2d Cir. 1969); *see also Dyer v. Hornbeck*, 706 F.3d 1134, 1143 (9th Cir.2013) (M. Smith, J., concurring) (explaining that circumstances and authorities’ psychological pressure created custody, despite the fact that detainee was aware of her physical ability to leave during an unescorted bathroom break or out of an unlocked door of the interrogation room).

26 The Ninth Circuit has set forth the following non-exhaustive list of factors that are  
27 particularly relevant to the custody inquiry: “(1) the language used to summon the individual; (2) the  
28 extent to which the defendant is confronted with evidence of guilt; (3) the physical surroundings of

1 the interrogation; (4) the duration of the detention; and (5) the degree of pressure applied to detain  
2 the individual.” *Kim*, 292 F.3d at 973 (quoting *United States v. Hayden*, 260 F.3d 1062, 1066 (9th  
3 Cir. 2001)) (internal quotations omitted). Other factors may also be “pertinent to, and even  
4 dispositive of, the ultimate determination whether a reasonable person would have believed he could  
5 freely walk away from the interrogators.” *Id.* at 974.

6 Here, Carroll was subjected to interrogation for two discrete periods of time. First, he was  
7 interrogated from approximately 9:30 am to 12:11pm. After a break lasting nearly eighty minutes,  
8 the detectives resumed their interrogation of Carroll from about 1:30pm to 5:30pm. In determining  
9 whether Carroll was in custody during either interrogation, the Court looks to the circumstances  
10 attendant to each.

11 1. Morning Interrogation

12 The first *Kim* factor – the language used to summon the defendant – weighs in favor of the  
13 government. Detectives Hanson and Franco’s initial statement to Carroll was:

14 [W]e want to talk with you. We’d like to talk with you down a the  
15 Lynnwood Police Department, just its nicer there. Would you be  
willing to come down there with us?

16 *Id.* at 9:5-6. Use of the words “would you be willing” directly implies that Carroll had the ability to  
17 decline their invitation. Further, the detectives acceded to Carroll’s responsive request that he would  
18 like to “talk to [his] girlfriend about it first” because he is “kind of dumb.” *Id.* at 9:8. The detectives  
19 offered to give Carroll a ride to the department “unless [he had] a car.” *Id.* at 9:19-21. When  
20 discussing the logistics of Carroll’s transport to the department, Detective Franco clearly indicated  
21 that her suggestions were merely “[f]ood for thought.” *Id.* at 11:2-4. When the logistics seemed  
22 settled Franco asked for Carroll’s final approval. *See Id.* at 17 (“Does that work for ya?”). When  
23 Carroll asked if he could “grab a pack of smokes” before joining the detectives, Franco responded  
24 “absolutely.” *Id.* at 19:8-10. While the discussion lasted almost fifteen minutes, the officers’  
25 language was not coercive, and reflected deference to Carroll’s preference. Carroll’s acceptance of  
26 the officer’s invitation was voluntary. *See United States v. Bassignani*, 575 F.3d 879 (9th Cir. 2009)  
27 (finding that voluntary interaction with law enforcement weighed in favor of non-custody.)

28 Once at the police department, Franco told Carroll:

1 I appreciate you coming down here and talking to us, and [] if you  
2 want to leave just let me know, we don't know this building but we  
will get ya out. Alright, it not a problem just let me know . . .

3 Ex. B at 36:14-16. This explicit instruction to Carroll, that he was free to leave, also weighs in favor  
4 of a determination that the interrogation was non-custodial. *United States v. Crawford*, 372 F.3d  
5 1048, 1051 (9th Cir. 2004) (explaining that an advisement to the suspect that "he could leave any  
6 time" strongly indicated a non-custodial interrogation). Accordingly, the first *Kim* factor weighs  
7 decidedly in favor of the government.

8 The second factor – the extent to which the defendant is confronted with evidence of guilt –  
9 weighs in favor of the government as well. While interrogating Carroll, the officers did not present  
10 any evidence suggesting Carroll's guilt. *United States v. Norris*, 428 F.3d 907, 913 (9th Cir. 2005)  
11 (explaining that "merely asking" about allegations without a presentation of evidence suggesting  
12 guilt supports a non-custodial finding). Further, for the first two hours of the interrogation, the  
13 conversation was largely driven by Carroll, who presented a story of being ripped-off in an attempt  
14 to purchase a large amount of marijuana. Through out the entire interrogation, the detectives asked  
15 follow up questions regarding the details of Carroll's story, but they did not contradict him with  
16 evidence or challenge his account of events. Cf. *United States v. Lee*, 699 F.2d 466, 467 (9th Cir.  
17 1982) (finding custody where, among other things, law enforcement "confronted [a suspect] with  
18 evidence of his guilt, and told him it was time to tell the truth"). Thus, the second *Kim* factor weighs  
19 against custody as well.

20 The third factor – the physical surroundings of the interrogation – weighs heavily toward a  
21 finding of custody. Carroll was interrogated in a windowless, seven-foot by seven and a half-foot  
22 room in the Lynnwood police department. *See* Docket No. 139; *see also* HEARING; *Crawford*, 372  
23 F.3d at 1059 (recognizing that interrogations in a police station generally weighs toward custody);  
24 *Kim*, 292 F.3d at 972 (finding that small windowless rooms that isolate or restrict a defendant can  
25 create a "police dominated" environment and indicate custody). Furthermore, the interrogation  
26 room was located in a secure-access area, in which any unescorted movement of unauthorized  
27 personnel and the public is prohibited. Thus, Carroll was dependent upon the officers to escort him  
28 out of the room, and out of the secure area. *United States v. Wauneka*, 770 F.2d 1434, 1438 (9th Cir.

1 1985) (a suspect's dependence on the authorities for the ability to leave weighs toward custody).  
2 This security protocol was adhered to, and a Lynnwood police officer – Jeff Mason – sat by the door  
3 of the interrogation room to make sure Carroll did not try to “wander around” while Detectives  
4 Hanson and Franco stepped out. In short, Carroll was interrogated in a small room, isolated within  
5 a secured floor of a police department, under constant supervision by three visibly armed police  
6 officers.

7 The fourth factor – duration of interrogation – also weighs in favor of a finding of custody.  
8 Carroll’s morning interrogation lasted nearly three hours. This duration has been held to tip this  
9 factor toward a finding of custody. *See United States v. Barnes*, 713 F.3d 1200, 1204 (9th Cir. 2013)  
10 (finding that an interrogation lasting roughly two hours is indicative of custody); *see also*  
11 *Bassignani*, 575 F.3d at 887 (noting that an interview lasting slightly more than two hours was  
12 “lengthy” and weighed toward custody).

13 The final factor – the degree of pressure applied to detain the defendant – weighs against  
14 non-custody. The detectives did not physically restrain, threaten or accuse Carroll in a manner that  
15 would substantially undermine Franco’s statement to Carroll that he could leave when he wanted.  
16 While the impact of Franco’s statement that Carroll was free to leave had likely dissipated after three  
17 hours of questioning in a small room since that statement was not repeated, the detectives did not  
18 pressure, cajole, or confront Carroll during the morning interrogation. Thus, the final factor weighs  
19 in favor of a finding of non-custody.

20 Taken as a whole, the *Kim* factors favor a determination that a reasonable person in Carroll’s  
21 circumstances would have felt free to leave the interrogation. Thus, Carroll was not in custody  
22 during the first interrogation, and the motion to suppress is **DENIED** as to the statements made  
23 during it.

24 2. Afternoon Interrogation

25 The environment of the afternoon interrogation was different; nearly all the *Kim* factors point  
26 to custody. The first *Kim* factor – the language used to summon the defendant – is neutral. On the  
27 one hand, Carroll agreed to wait in the lobby (or on the outside benches) while the detectives spoke  
28 with Gearin prior to the afternoon interrogation. While Carroll was free physically to leave as he

1 was left unescorted for about an hour, that fact is not dispositive. *See Dyer v. Hornbeck, supra.*  
2 Notably, although Carroll agreed to wait and return for further questioning, he may have felt under  
3 some pressure not to leave without submitting to further questioning. At the end of the first three  
4 hours of interrogation in the morning, Detective Hanson said to Carroll:

5 . . . We'll give you a little break, ya know you can hang outside in the  
6 lobby or bum a smoke off somebody while we talk to your girlfriend  
7 **but** I have a couple more quick questions for ya, to rap it up today. If  
that's okay with you?

8 Exhibit C at 142:1-3 (emphasis added). The detectives did not plainly inform Carroll he was free to  
9 leave. They characterized this period of time as a "break." Then, during the next four hours of  
10 interrogation, they did not tell him he was free to leave. In fact, as discussed below, they refused to  
11 heed his request to leave and have lunch with his girlfriend.

12 The second factor – the extent to which the defendant is confronted with evidence of guilt –  
13 weighs strongly in favor of Carroll. The nature of the interrogation took a distinct turn when it  
14 resumed after the break. A few minutes into the afternoon interrogation, Franco confronted Carroll  
15 with the story – credited to Gearin – that Carroll had started crying and run away upon hearing that  
16 Humboldt County detectives were contacting the Gearins about a homicide. Franco then tells  
17 Carroll that she interprets the story to mean "that [Carroll is] keeping something from [her] and [she]  
18 has] a feeling that it is something very important and [she'd] like to know what that is." Ex. D at  
19 4:11-17. This testimonial evidence both contradicted Carroll's prior statements and broadly  
20 implicated his involvement in a serious crime. *See United States v. Toliver*, 480 F. Supp. 2d 1216,  
21 1219 (D. Nev. 2007) (finding that an officer's use of witness statements to contradict a defendant  
22 indicated custody). Franco also accused Carroll of being at the scene of Rana's murder multiple  
23 times. *See Id.* at 5-6. Franco accused Carroll of taking Rana's car (*Id.* at 9:17-24) and then of  
24 burning Rana's car (*Id.* at 10). When Carroll denied each of these accusations, Franco told him "we  
25 need one hundred percent honesty." Such repeated suggestions of involvement in a serious crime  
26 weighs in favor of finding custody. *See Wauneka*, 770 F.2d at 1438-39 (finding that accusatory  
27 questions indicated custody); *Lee*, 699 F.2d 466, 467 (9th Cir. 1982) (finding custody where, among  
28 other things, law enforcement "confronted [a suspect] with evidence of his guilt, and told him it was

1 time to tell the truth"). Moreover, through out the interrogation the detectives raised their voices and  
2 repeatedly accused Carroll of lying. *Id.* at 10:7-12; *Bassignani*, 575 F.3d at 884 ("We have found a  
3 defendant in custody when the interrogator adopts an aggressive, coercive, or deceptive tone."). The  
4 accusatory nature and tone of the afternoon interrogation is distinctly different from the course and  
5 tone of the morning interrogation.

6 The third factor – the physical surroundings of the interrogation – continued to weigh toward  
7 a finding of custody. As discussed above, Carroll was interrogated in a small room, isolated within a  
8 secured floor of a police department, under constant supervision by three visibly armed police  
9 officers.

10 The fourth factor – duration of interrogation – also weighs even more strongly in favor of a  
11 finding of custody than the morning session because Carroll's second interrogation was four hours  
12 long, and came on the heels of a three hour interrogation. *See Barnes*, 713 F.3d at 1204.  
13 Furthermore, Carroll was deprived of food from his waking hour of nine o'clock in the morning to  
14 three o'clock in the afternoon when he was finally taken to a fast food lunch.

15 The final factor – the degree of pressure applied to detain the defendant – also favors  
16 custody. Carroll was visibly and professedly fatigued by the beginning of the second interrogation  
17 as the questioning turned accusatory. Carroll's fatigue and unease was further underscored by his  
18 intermittent crying, shaking, and physical manifestations of distress visible from the video. *See*  
19 Docket No. 78, Exhibit 2, *Video* at 14:53 - 15:08. Moreover, Carroll repeatedly told the officers that  
20 he "just want[ed] to hang out with [his] girlfriend" (Ex. D at 73:11) and requested that he be allowed  
21 to have lunch with her (*Id.* at 73-75). The officers did not heed his requests. Such a failure is highly  
22 indicative of custody. *Hall*, 421 F.2d 545 ("something [is] said or done by the authorities, either in  
23 their manner of approach or in the tone or extent of their questioning, which **indicates that they**  
24 **would not have heeded a request to depart** or to allow the suspect to do so.").

25 Taken as a whole, the *Kim* factors favor a determination that a reasonable person in Carroll's  
26 circumstances would not have felt free to leave the afternoon interrogation. Thus, Carroll was in  
27 custody within the meaning of *Miranda*. Because Detectives Hanson and Franco failed to give him  
28 a *Miranda* warning, Carroll's statements during the afternoon interrogation must be suppressed.

1     B.     Voluntariness

2           Carroll further contends that his statements should be suppressed because they were made  
3 involuntarily. The Court disagrees.

4           A confession is voluntary “when it is the product of a rational intellect and a free will.”  
5 *United States v. Leon Guerrero*, 847 F.2d 1363, 1365-66 (9th Cir. 1988) (internal citations omitted).  
6 In deciding whether a defendant’s confession was voluntary, a court must consider “whether [the]  
7 defendant’s will was overborne by the circumstances surrounding [the] giving of the confession,” an  
8 inquiry that “takes into consideration the totality of all the surrounding circumstances – both the  
9 characteristics of the accused and the details of the interrogation.” *Dickerson v. United States*, 530  
10 U.S. 428, 434 (2000) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973) (internal  
11 quotations omitted). In “company with all of the surrounding circumstances,” the Supreme Court  
12 has recognized the following relevant factors: “the duration and conditions of detention, the manifest  
13 attitude of the police toward him, his physical and mental state, the diverse pressures which or  
14 sustain his powers of resistance and self-control.” *Culombe v. Connecticut*, 367 U.S. 568, 602  
15 (1961).

16           “The test is whether, considering the totality of the circumstances, the government obtained  
17 the statement by physical or psychological coercion or by improper inducement so that the suspect’s  
18 will was overborne.” *Leon Guerrero*, 847 F.2d at 1366 (internal citations omitted).

19           Here, considering the totality of the circumstances, the Court finds that although the *Kim*  
20 factors establish custody during the afternoon interrogation, Carroll’s will was not overborne  
21 through physical or psychological coercion, or by improper inducement. First, Franco and Hanson  
22 did not offer Carroll any inducements. While Hanson told Carroll that George W. Bush was giving  
23 Carroll “amnesty” for his marijuana related offenses, that statement was laughed at by both Carroll  
24 and Hanson. Ex. C at 102:2-103:5. Viewed in context, it is clear that this statement was a joke, and  
25 did not have the effect of inducing Carroll’s statements. *See id.* at 103:5 (“Carroll: ‘I’m psyched,  
26 George W. Bush is giving me amnesty (laughing)’”). Moreover, there was no promise of amnesty  
27 from the murder charge in exchange for an admission.

28

1       Second, while Carroll’s interrogation was undoubtedly physically and psychologically taxing  
2 for the reasons discussed above, it was not sufficiently so to meet the involuntary standard. *Cf.*  
3 *United States v. Coleman*, 208 F.3d 786, 791 (9th Cir. 2000) (finding statements voluntary where  
4 suspect was suffering from heroin withdrawal during interrogation and the questioning agents had  
5 promised him leniency in return for his cooperation); *cf United States v. Preston*, 751 F.3d 1008,  
6 1014 (9th Cir. 2014) (finding statements involuntary where suspect was mentally disabled and  
7 officers misled and deceived the defendant during questioning). Accordingly, the Court rejects  
8 Carroll’s request to suppress his statements as involuntary.

## 10 IT IS SO ORDERED.

12 || Dated: May 1, 2015

  
EDWARD M. CHEN  
United States District Judge